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In re Application of McEWAN et al :
U.S. Application No.: 09/980,528 :
Int. Application No.: PCT/US99/23781 :
Int. Filing Date: 12 October 1999 :
Priority Date: none :
Attorney Docket No.: 604.10-US1 :
For: INDIVIDUALIZED ELECTRONIC :
COMMERCIALS :
:

DECISION

This is in response to the papers filed 14 November 2001, which is being treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 12 October 1999, applicants filed international application PCT/US99/23781. A Demand for international preliminary examination, in which the United States was elected, was filed on 17 August 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States will expire at midnight on 12 April 2002.

On 14 November 2001, applicants filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1) and a declaration executed by inventor Richard McEwan and by the executors of inventor Serge Herring, who according to the declaration is deceased.

DISCUSSION

37 CFR 1.42 provides, "In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent."

Effective 07 November 2000, 37 CFR 1.497(b)(2) specifies that, where a person making the declaration is the legal representative of a deceased inventor, the declaration shall state the following: (1) the relationship of the person to the inventor, (2) the facts the inventor would have been required to state, upon information and belief, (3) that the person is the legal representative of the deceased inventor, and (4) the citizenship, residence, and mailing address of the legal representative.

In the present case, the declaration filed 14 November 2001 is not in compliance with 37 CFR 1.497(b)(2). It is further noted that the respective given names of the inventors listed on the declaration do not match those listed in the international application. Additionally, the signature of Monica Isam is not accompanied by the date of execution, thereby rendering the execution improper.

CONCLUSION

For the reasons above, the request for status under 37 CFR 1.42 is DISMISSED without prejudice.

A proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file a proper response will result in ABANDONMENT of the application. The response should include a cover letter entitled "Renewed Request for Status Under 37 CFR 1.42" and must include an oath or declaration in compliance with 37 CFR 1.497. Extensions of time are available pursuant to 37 CFR 1.136(a). If the oath or declaration is filed after 12 April 2002, the surcharge set forth in 37 CFR 1.492(e) must be submitted.

Please direct further correspondence with respect to this matter to the Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.


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